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Thomas Herrmann

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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C

PO BOX 7021

TROY, MI 48007-7021

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS HERRMANN

Appeal 2008-0153
Application 10/626,041
Technology Center 3600

Decided: March 26, 2008

Before ERIC GRIMES, RICHARD M. LEOVITZ, and FRANCISCO PRATS, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* PRATS.

Opinion Concurring filed by *Administrative Patent Judge* GRIMES.

PRATS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an article that allows a spray bottle to be suspended from an ironing board or other surface. The Examiner has rejected the claims as anticipated and obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.¹

STATEMENT OF THE CASE

“It is common to use a spray bottle while ironing, for example, to dampen garments and provide a more relaxed fabric” (Spec. 1). However, such spray bottles can be inconvenient because “[t]hey cannot be set directly on top of an ironing board, for example, since they get in the way when larger pieces of fabric need to be ironed” (*id.*).

The Specification discloses “an article that attaches to a spray bottle, allowing the bottle to be suspended from a shelf, ironing board, or the like. The article preferably further includes an ergonomic indent enabling the user to comfortably hold the article connected to a spray bottle in a comfortable and convenient manner” (*id.* at 3).

Claims 1, 3, and 5-13 are pending (App. Br. 1). The Examiner has indicated claim 13 as being allowable (*id.*). Claims 1, 3, and 5-12 are on appeal (*id.*). Claim 1 is representative of the appealed subject matter and reads as follows:

1. An article enabling a spray bottle to be suspended from an ironing board or other surface, the spray bottle including a neck portion to which a manually operated spray head attaches, the article comprising:
 - a shaped body having a lower end including a continuous ring of material forming an aperture configured for coupling to a neck of a spray bottle; and
 - a side member extending upwardly from the lower end, the side member terminating in a bent upper lip located directly above the aperture for hanging a spray bottle coupled thereto.

¹ In this decision we consider only those arguments actually made by Appellant. Arguments that Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner applies the following documents in rejecting the claims:

Schuler	US 4,379,578	Apr. 12, 1983
Barts	US 3,794,285	Feb. 26, 1974

The following rejections are before us for review:

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as anticipated by Schuler (Ans. 4).

Claims 3, 8, and 11 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Schuler and Barts (Ans. 4-5).

Claims 6, 7, 9, 10, and 12 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Schuler (Ans. 5).

ANTICIPATION

ISSUE

The Examiner cites Schuler as describing “a plastic device comprising a lower portion (20) including a continuous ring of material defining an aperture, and a side member (19) extending from said lower portion terminating in a bent lip (18) directly above the aperture capable of hanging a spray bottle coupled thereto” (Ans. 4). The Examiner urges that the upper lip of Schuler’s device provides “a friction force since any surface provides friction unless being made of anti-friction material, which is not the case here” (*id.*).

Appellant contends that Schuler does not anticipate claim 1 because Schuler’s device does not meet the limitation requiring “an aperture configured for coupling to a neck of a spray bottle,” or the limitation requiring a “side member terminating in a bent upper lip located directly

above the aperture for hanging a spray bottle coupled thereto” (App. Br. 4). Appellant further contends that Schuler does not anticipate claim 5 because Schuler lacks a friction enhancing surface (Reply Br. 2).

The issue with respect to this rejection, therefore, is whether the Examiner erred in finding that Schuler meets all of the limitations recited in claims 1 and 5.

PRINCIPLES OF LAW

It is well settled that “[t]o anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). It is also “well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable.” *Id.* Thus, functional limitations directed to intended uses in the body of a product claim do not serve to distinguish the claimed product from prior art products inherently capable of performing the claimed function. *See id.* at 1478-79 (holding that a prior art apparatus meeting all claimed structural limitations was anticipatory because it was inherently capable of performing the claimed function).

“A patent applicant is free to recite features of an apparatus either structurally or functionally.” *Id.* at 1478. However, “[f]unctional terminology may render a claim quite broad . . . [;] a claim employing such language covers *any and all* embodiments which perform the recited function.” *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971). Moreover, as stated in *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977) (quoting *In re Swinehart*, 439 F.2d at 212-13):

[W]here the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on.

During examination, the PTO must interpret terms in a claim using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

However, “while ‘the specification [should be used] to interpret the meaning of a claim,’ courts must not ‘import[] limitations from the specification into the claim.’ . . . [I]t is improper to ‘confine the claims to th[e] embodiments’ found in the specification” *In re Trans Texas Holdings Corp.*, 498 F.3d 1290, 1299 (Fed. Cir. 2007) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed.Cir.2005), citations omitted, bracketed text in internal quotes in original).

FINDINGS OF FACT

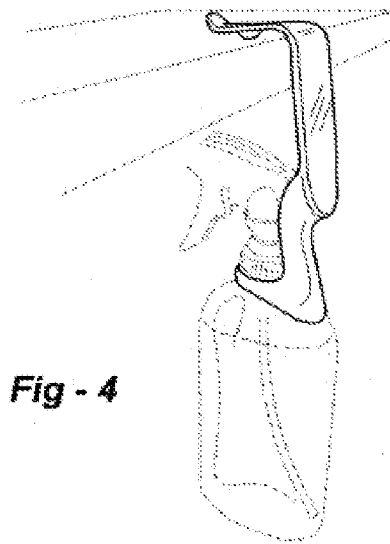
1. Claim 1 recites an article that allows a spray bottle having a neck with an attached manually operated spray head to be suspended from an ironing board or other surface. The article has the following features:

(a) a shaped body having a lower end that has a continuous ring of material that forms an aperture configured for coupling to the neck of a spray bottle; and

(b) a side member extending upwardly from the lower end, the side member terminating in a bent upper lip for hanging the coupled spray bottle, the upper lip being located directly above the aperture.

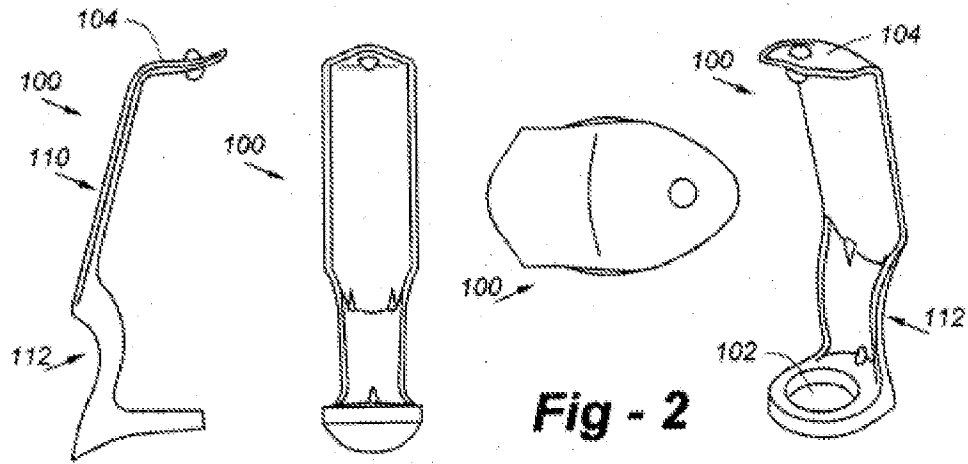
2. Claim 5 recites “[t]he article of claim 1, wherein the upper lip includes a surface or feature to enhance friction or holding capability.”

3. Figure 4 of the instant application is reproduced below:



The figure shows “the way in [which] the preferred embodiment may hold [a] spray bottle from a shelf, ledge, ironing board or other surface” (Spec. 4). More specifically, the figure shows an embodiment of the claimed article with the lower portion of the article encircling the neck of a spray bottle shown in phantom, the article and coupled spray bottle hanging from a shelf also shown in phantom.

4. Figure 2 of the instant application is reproduced below:



The figure shows “a model of the preferred embodiment seen from different perspectives” (Spec. 4). Figure 2 shows the lower end of the article with an aperture 102, as well as a side member 110 extending to a bent upper lip 104. Side member 110 includes “an ergonomic indent 112 enabling the user to comfortably hold the article connected to a spray bottle” (*id.* at 4-5).

5. Schuler describes a “reusable bottle holder . . . adapted to be used in connection with bottles now commonly used for soft drinks such as the two liter bottles that have a flange like projection at the neck of the bottle” (Schuler, abstract). Figure 1 of Schuler is reproduced below:

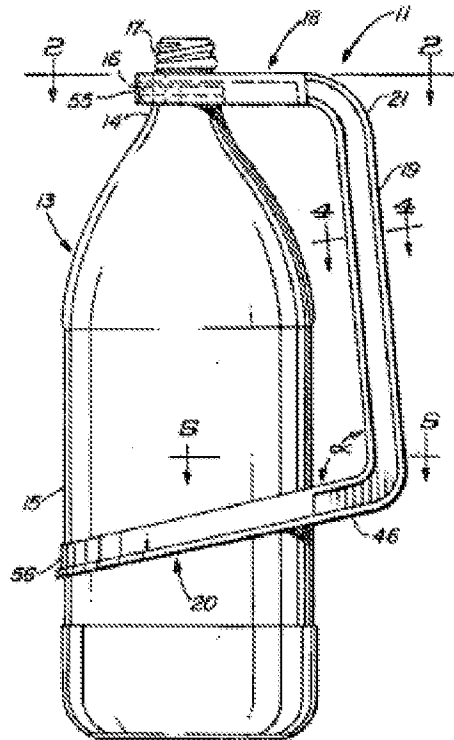


FIG. 1

Schuler states that, “[i]n FIG. 1, a reusable bottle holder 11 adapted to be used with a bottle 13 is shown. . . . The reusable bottle holder 11 has a locking portion 18, a handle portion 19, and a body support portion 20” (Schuler, col. 2, ll. 14-29).

6. Schuler discloses that the “body support portion [is] adapted to be inserted about the lower body portion of the bottle in a friction fit” (Schuler, col. 1, ll. 40-42). Thus, “[b]ody support member 20 has the shape of a cylindrical or tubular section with a cylindrical diameter, i.e. measured at 90° from the longitudinal axis of the cylindrical section, that is approximately the same as the diameter of the body 15 of the bottle 13” (*id.* at col. 3, ll. 30-35).

7. Figure 2 of Schuler is reproduced below:

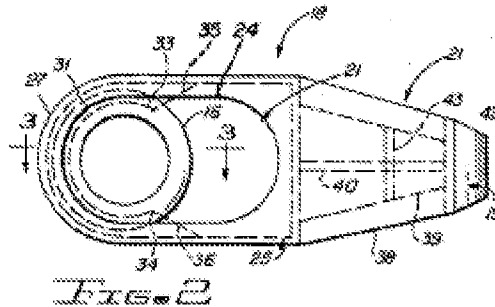


Figure 2 of Schuler shows the upper locking portion as viewed from above. Schuler discloses that “the locking portion 18 has a top portion 23 having an aperture 24 with a width which slightly larger than the width of the neck 14 and the threaded portion 17 of the bottle 13” (Schuler, col. 2, ll. 29-32). Schuler states that “[t]he locking portion 18 locks in the neck 14 of the bottle 13 and secures it by friction” (*id.* at col. 3, ll. 1-2).

8. Schuler states:

Referring back to FIG. 1, it should be noted that desirably the distance between the outward point 55 of the locking portion 18 and the outward point 56 of the body support portion 20 should be as large as possible in order to accom[m]odate the center of gravity of the contents of the bottle 13 as it is emptied. The desired separation may be achieved by disposing the body support portion 20 at an angle from the handle portion 19 with the angle typically being greater than ninety degrees (90°). While this angular displacement is desired for easier handling, it is not required as the locking portion 18 provides a sufficient grip on the bottle 13 so that even sloshing action of a partially empty bottle will not disengage the reusable bottle holder 11 from the bottle 13.

(Schuler, col. 3, ll. 41-54.)

ANALYSIS

We agree with the Examiner that Schuler discloses an article that meets all of the limitations in claims 1 and 5. Specifically, Schuler's bottle holder has the "lower end" (body support portion 20), "bent upper lip" (locking portion 18), and "upwardly extending side member" (handle portion 19) recited in claim 1 (*see* Finding of Fact ("FF") 5, above).

The ring-shaped body support portion 20 of Schuler's bottle holder (*see* FF 6) meets claim 1's limitation requiring the lower end of the article to be a continuous ring that forms an aperture. Also, while it might not be a closely mated fit, one could reasonably conclude that the spray head-securing mechanism on the neck of a spray bottle such as that shown in Appellant's Figure 4 (FF 3) could be screwed on to the ring of support portion 20 such that the head-securing mechanism engaged a portion of it, thereby allowing the bottle to be suspended by its neck from the bottle holder. Therefore, because Schuler's body support portion 20 can be connected with the neck of a spray bottle using the spray head-securing mechanism, we agree with the Examiner that it was reasonable to conclude that Schuler's article meets claim 1's limitation that the lower end has "an aperture configured for coupling to the neck of a spray bottle." *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (functional limitations directed to intended uses in the body of a product claim do not serve to distinguish the claimed product from prior art products inherently capable of performing the claimed function); *see also In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971) (claim using functional language "covers *any and all* embodiments which perform the recited function").

The locking portion 18 of Schuler's article bends away from the handle portion 19, and is located directly above the aperture of body support 20 (*see* FF 5), as recited in claim 1. Because the locking portion 18 is flat and therefore can be suspended from a flat surface, we agree with the Examiner that Schuler meets the limitation requiring the article to have an upper lip "for hanging a spray bottle coupled thereto." Moreover, because it has an aperture (*see* FF 7), the locking portion 18 can allow Schuler's article to be suspended from other surfaces, like the surface of a hook.

Therefore, because Schuler's article meets all of the limitations recited in claim 1, we agree with the Examiner that Schuler anticipates claim 1.

We also agree with the Examiner that Schuler anticipates claim 5. Specifically, Schuler discloses that the locking portion 18 uses friction to engage with the neck portion of a soft drink bottle (FF 7). We therefore agree with the Examiner that it was reasonable to conclude that the locking portion 18 of Schuler's article is made of a material that has frictional properties. Because the upper locking portion 18 of Schuler's bottle holder has frictional properties, it meets the limitation in claim 5 requiring the upper lip to include "a surface or feature to enhance friction or holding capability."

Appellant urges that Schuler discloses that "[b]ody support member 20 has the shape of a cylindrical or tubular section with a cylindrical diameter, i.e. measured at 90.degree. from the longitudinal axis of the cylindrical section, that is approximately the same as the diameter of the body 15 of the bottle 13" (App. Br. 4 (quoting Schuler, col. 3, ll. 30-35)). Therefore, Appellants argue, "certainly item 20 is not capable of meeting the limitation of 'an aperture configured for coupling to a neck of a spray

bottle” (App. Br. 4). Appellant further “disagrees that Appellant’s use of ‘configured’ merely conveys intended use, since ‘configured’ also conveys structural limitations insofar as the article is *physically configured*” (Reply Br. 2)

We are not persuaded by these arguments. We note that Appellant’s Figure 4 (FF 3) shows an embodiment of the claimed article in which the lower portion’s entire ring closely encircles the neck of a spray bottle.

However, claim 1 does not recite that the lower portion’s entire ring must closely encircle a spray bottle’s neck. Moreover, it is improper to limit claims to the embodiments disclosed in the Specification. *In re Trans Texas Holdings Corp.*, 498 F.3d 1290, 1299 (Fed. Cir. 2007). Thus, claim 1’s recitation “an aperture configured for coupling to a neck of a spray bottle” is not limited to configurations in which the aperture closely encircles the neck of a spray bottle

Rather, as discussed above, “a claim employing [functional] language covers *any and all* embodiments which perform the recited function.” *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971). Thus, the recitation “an aperture configured for coupling to a neck of a spray bottle” encompasses any aperture capable of being coupled a neck of a spray bottle.

We note that Schuler’s body support member 20 is intended to encircle a relatively large two liter soft drink bottle (*see* FF 5). However, we do not agree with Appellant that the size of Schuler’s body support member 20 renders it incapable of being coupled to a spray bottle.

Specifically, the term “coupling” in claim 1 encompasses any type or degree of engagement between the claimed article and the neck of any type of spray bottle. As discussed above, we agree with the Examiner that it was

reasonable to conclude that Schuler's body support portion 20 could be coupled to the neck of a spray bottle, e.g., by using the spray head-securing mechanism to engage the neck of a spray bottle with support member 20. Because Appellant has not shown that the Examiner was unreasonable in concluding that Schuler's article meets this limitation, Appellant has not met the burden required to rebut the Examiner's prima facie case of anticipation. *See In re Best*, 562 F.2d 1252, 1255 (CCPA 1977).

Appellant argues that Schuler is not "capable of meeting the limitation of a 'side member terminating in a bent upper lip located directly above the aperture for hanging a spray bottle coupled thereto'" because "'the bent lip (18)' identified by the Examiner is 'used up' during use, such that it is not available to hang anything therefrom, let alone a spray bottle" (App. Br. 4).

We are not persuaded by this argument. The Examiner's rejection refers only to Schuler's article comprising lower portion 20, side member 19, and bent lip 18 (Ans. 4), and does not reject claim 1 over Schuler's article when used in combination with a held bottle. When a bottle is not held in Schuler's device, locking portion 18 consists of a flat apertured surface that is bent away from the side member and is directly above the aperture in body support member 20 (*see* FF 4 and 6). Because flat locking portion 18 can be suspended from a flat surface, we agree with the Examiner that Schuler meets the limitation requiring the article to have an upper lip "for hanging a spray bottle coupled thereto."

Appellant argues that, because the angle " α " in Schuler's Figure 1 is greater than 90 degrees, "even if the upper portion 18 were misconstrued to be a 'bent lip,' the structure is not capable of performing the intended

function, since it would slip off any surface from which the device is hung” (Reply Br. 2).

We are not persuaded by this argument. Because claim 1 encompasses an article that can be hung from “an ironing board *or other surface*” (emphasis added), claim 1 encompasses an article which can be hung from surfaces other than horizontal surfaces of Appellant’s preferred embodiments. Moreover, Appellant has not explained or demonstrated why an article having Schuler’s angle “ α ” of greater than ninety degrees would inherently result in the article’s slipping from a surface, particularly a surface biased to holding Schuler’s upper lip 18. It is well settled that argument by counsel cannot take the place of evidence. *In re Cole*, 326 F.2d 769, 773, (CCPA 1964); *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997).

Also, while Schuler states that the optimal separation between the outward point of the locking portion 18 and the body support portion 20 “may be achieved by disposing the body support portion 20 at an angle from the handle portion 19 with the angle typically being greater than ninety degrees (90°)” (Schuler, col. 3, ll. 46-50), Schuler also discloses that “[w]hile this angular displacement is desired for easier handling, *it is not required* as the locking portion 18 provides a sufficient grip on the bottle 13 so that even sloshing action of a partially empty bottle will not disengage the reusable bottle holder 11 from the bottle 13” (*id.* at col. 3, ll. 50-54 (emphasis added)).

Thus, Schuler explicitly discloses that the angle between the lower portion and side member of its article can be less than ninety degrees. We therefore do not agree with Appellant that Schuler's article has a physical structure that would inherently lead to its slipping from any surface from which it might be hung.

Appellant argues that Schuler does not anticipate claim 5 because claim 5 requires "a surface or a feature to *enhance* friction or holding capability. This is not the same as simply relying on an existing material" (Reply Br. 2).

We are not persuaded by this argument. Claim 5 only requires "the upper lip [to] include[] a surface or feature to enhance friction or holding capability." Thus, claim 5 does not require the surface of the upper lip to have a coefficient of friction greater than the rest of the article. As discussed above, because locking portion 18 of Schuler's article is made of material that has a friction fit with a bottle (*see* FF 7), we agree with the Examiner that Schuler's portion 18 would be reasonably presumed to also have a surface that would meet claim 5's friction limitation.

Therefore, because Schuler's article meets all of the limitations in claims 1 and 5, we affirm the Examiner's anticipation rejection of those claims.

OBVIOUSNESS -- CLAIMS 6, 7, 9, 10, AND 12

Claims 6, 7, 9, 10, and 12 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Schuler (Ans. 5). The Examiner contends that a person of ordinary skill in the art would have considered the "molded plastic" article recited in the rejected claims to be obvious over Schuler (*see id.*).

Specifically, the Examiner cites Schuler as disclosing the claimed device “made of plastic,” but concedes that Schuler does not disclose how its plastic device was made (*id.*). The Examiner nonetheless concludes that claims 6, 7, 9, 10, and 12 would have been obvious to a person of ordinary skill because “molding is [] very well known [to] those skilled in the art,” and therefore “[t]he method of making the device is considered as a matter of expediency having no patentable significance in the instant case” (*id.*).

Appellant contends that, because the Examiner found the method of making the article to lack patentable significance, the Examiner did not consider all of the limitations in claim 6 (App. Br. 6-7). Under separate headings for each of the other claims subject to this rejection, Appellant reiterates the argument that the Examiner failed to consider all of the claims’ limitations (*see id.* at 6-8).

However, other than repeating that the Examiner failed to consider all the claims’ limitations, none of Appellant’s arguments points to any specific limitation, except for the “molded plastic” limitation (*see id.* at 6-8). Nor does Appellant present any specific argument as to why the cited prior art fails to meet the claimed limitations (*see id.*).

Because Appellant’s arguments are tantamount to merely pointing out what the claims recite, we do not consider the claims subject to this ground of rejection as being argued separately, and will therefore consider them as a group. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). We consider claim 6 to be representative of the rejected claims.

The issue with respect to this rejection, then, is whether the Examiner erred in concluding that a person of ordinary skill would have considered claim 6 obvious in view of Schuler.

PRINCIPLES OF LAW

Recently addressing the standard of obviousness, the Supreme Court reaffirmed the principle that addressing a known issue with an established solution is obvious under 35 U.S.C. § 103 when no unexpected result is obtained:

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742 (2007).

FINDINGS OF FACT

9. Representative claim 6 recites “[t]he article of claim 1, wherein the shaped body is made of molded plastic.”

10. Schuler discloses that “[i]t is, of course, understood that the bottle holder 11 can be integrally formed of any material, for example metal, wood, plastics, etc.” (Schuler, col. 4, ll. 44-46). Schuler does not explicitly state that bottle holder 11 is made of molded plastic.

11. Schuler discloses, however, that with respect to a different embodiment, “the bottle holder 101 may be of any material although this embodiment is particularly adapted for molding in plastics. Handle portion 105 may be a single piece molded in plastic” (Schuler, col. 4, ll. 62-65).

ANALYSIS

We agree with the Examiner that a person of ordinary skill in the art would have considered it obvious to make Schuler's bottle holder 11 from molded plastic, as recited in claim 6. While Schuler does not explicitly state that bottle holder 11 is made of *molded* plastic, Schuler discloses that that embodiment can be made of plastic (FF 10). Moreover, Schuler discloses that other embodiments of its bottle holder are suitably made of molded plastic (FF 11).

Based on these disclosures, we agree with the Examiner that a person of ordinary skill would have reasoned that bottle holder 11 would have been suitably made from molded plastic as recited in claim 6. We therefore also agree that one of ordinary skill in the art would have considered claim 6 obvious in view of Schuler. *See KSR*, 127 S. Ct. 1727, 1742 (addressing a known issue with an established solution is obvious under § 103 when no unexpected result is obtained).

We do not agree with Appellant that the Examiner failed to consider all of the limitations in claim 6. Claim 6 depends from claim 1. As discussed above, the Examiner addressed the limitations of claim 1 in the anticipation rejection.

Claim 6 adds to the article recited in claim 1 the limitation that "the shaped body is made of molded plastic." In rejecting claim 6, the Examiner explicitly stated that "molding is [] very well known [to] those skilled in the art" (Ans. 5). Appellant does not dispute the Examiner's assessment that molding was a known method of making shaped plastic articles like Schuler's bottle holder 11. Moreover, Schuler's disclosure that certain embodiments of its bottle holder can be made from molded plastic (FF 11)

supports the Examiner's position that using molded plastic was an established, and suitable, method of making Schuler's bottle holder 11.

Because we agree with the Examiner that it would have been obvious to make Schuler's bottle holder 11 from molded plastic, we affirm the Examiner's obviousness rejection of claim 6 over Schuler. Because Appellant did not present separate arguments with respect to claims 7, 9, 10, and 12 (*see discussion supra*), we also affirm the Examiner's obviousness rejection of those claims over Schuler. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OBVIOUSNESS -- CLAIMS 3, 8, AND 11

ISSUE

Claims 3, 8, and 11 stand rejected as obvious in view of Schuler and Barts (Ans. 4-5). The Examiner contends that a person of ordinary skill in the art viewing Barts would have considered it obvious for the side member of Schuler's article to have a "concave indent" as recited in the rejected claims (*see id.* at 4).

Specifically, the Examiner cites Barts as disclosing "a bottle holder having a lower end, an upper lip substantially directly above the lower end, and a side member having curved back surface (for example 23)" (Ans. 4). The Examiner contends that a person of ordinary skill in the art would have considered it obvious to provide "the holder shown by Shuler with a generally curved back as shown by Barts for a variety of reasons; for example, reinforcing, aesthetics, etc." (*id.*).

Appellant contends that claims 3, 8, and 11 require a "concave indent" rather than the curved back surface urged by the Examiner, and that Barts discloses a wall that diverges from another wall, as opposed to the required concave indent (App. Br. 5-6). Appellant contends that the cited references

do not provide motivation for their combination, and that Schuler in fact teaches away from the asserted combination of references (*id.* at 6).

Appellants do not argue the claims subject to this ground of rejection separately (*see* App. Br. 5-6). We select claim 3 as being representative of the rejected claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The issue with respect to this ground of rejection, then, is whether the Examiner erred in concluding that one of ordinary skill would have considered claim 3 obvious in view of Schuler and Barts.

PRINCIPLES OF LAW

Recently addressing the issue of obviousness, the Supreme Court reaffirmed “the conclusion that when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007) (quoting *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)). The Court reasoned that a “patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men.” *Id.* at 1739 (quoting *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U.S. 147, 152 (1950)).

The Court emphasized that “[i]n determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *Id.*, at 1741-42. The Court also emphasized a flexible

approach to the obviousness question, stating that the analysis under 35 U.S.C. § 103 “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741. The Court noted that “[a] person of ordinary skill is . . . a person of ordinary creativity, not an automaton.” *Id.* at 1742.

FINDINGS OF FACT

12. Claim 3 recites “[t]he article of claim 1, wherein the side member includes a concave indent.”

13. Barts discloses “a bracket for holding a container having a hollow thin-walled handle formed in the main body of the container by simultaneously supporting the bottom wall of the container while gripping the handle of the container” (Barts, col. 1, ll. 44-48). Barts discloses that the middle portion of the container “has apertures through which fasteners may extend to secure the bracket to a wall” (*id.* at col. 1, ll. 34-36).

14. Figure 1 of Barts, reproduced below, shows the bracket in use:

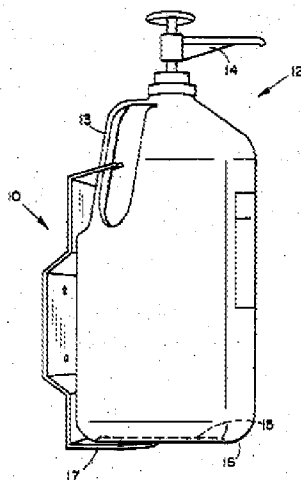
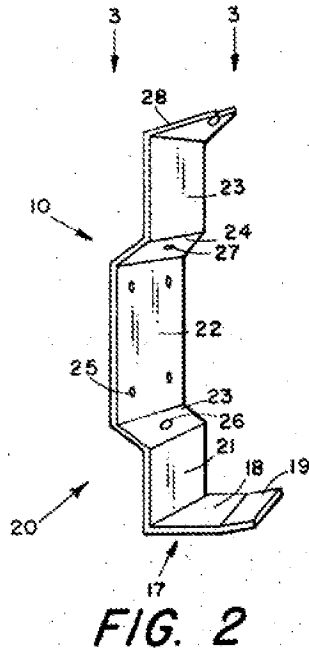


FIG. 1

The figure shows Barts' bracket 10 holding a bottle-shaped container 12 which is supported in the bracket by lower shelf 17 (*see* Barts, col. 2, ll. 7-22).

15. Figure 2 of Barts, reproduced below, shows the bracket in more detail, without the held bottle:



The figure shows the bracket's "middle portion 20 which includes three vertical walls 21, 22, and 23" (Barts, col. 2, ll. 22-24). Barts' Figure 2 also shows "[w]alls 23 and 24 [which] diverge from vertical wall 22" (*id.* at col. 2, ll. 32-33).

ANALYSIS

We agree with the Examiner that a person of ordinary skill in the art would have considered the article recited in claim 3 obvious in view of Schuler and Barts. Specifically, viewing Barts' Figure 2 (*see* FF 15), the angled space formed between vertical wall 21 and angled wall 23 can be considered a "concave indent" with respect to vertical wall 22. We therefore agree with the Examiner that Barts meets claim 3's limitation requiring a "concave indent," when claim 3 is given its broadest reasonable interpretation. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We also agree with the Examiner that one of ordinary skill in the bottle holder art, being a person of ordinary creativity and common sense, *see KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742-43 (2007), would have reasoned from Barts' disclosure of the usefulness of concave indents in bracket-type bottle holders that it would be equally useful to include such indents in the side member of Schuler's bottle holder, as recited in claim 3.

Thus, as the Supreme Court recently pointed out, "when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *Id.* at 1740 (quoting *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)). *See also id.* at 1739 ("[A] 'patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men.'" (quoting *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U.S. 147, 152 (1950))).

Appellant does not point to, nor do we see, any unexpected result coming from the claimed combination of elements. Therefore, because

claim 3 recites an article having a configuration known to be useful in bottle holders, and because nothing unexpected results from that configuration, we agree with the Examiner that claim 3 would have been obvious to a person of ordinary skill in the art in view of the cited references.

Appellant argues that the Examiner erred in finding that Barts' bracket meets claim 3's limitation requiring the side member to have a "concave indent" (App. Br. 5-6). Rather, Appellant urges, Barts' wall 23 "is simply 'a wall that diverges from a vertical wall'" (*id.* at 6).

We are not persuaded by this argument. During examination, the PTO must interpret terms in a claim using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Appellant's Figure 2 shows ergonomic indent 112 to be an indentation of side member 110, the indentation extending into the area between the upper lip 104 and lower end 102 of the device (*see* FF 4). We therefore interpret the term "concave indent" to encompass indentations of the side member that extend into the area between the article's upper lip and lower end.

Turning to Barts' Figure 2, the angled structure formed by vertical wall 21 and angled wall 23 can be considered to extend into the area between the lower portion 17 and upper portion 28, and moreover creates an indent in the back of Barts' bracket (*see* FF 15). Thus, when given its broadest reasonable interpretation consistent with the Specification, we

agree with the Examiner that the “concave indent” limitation in claim 3 encompasses the structure disclosed by Barts.

Appellant argues that Schuler does not suggest modifying its article for reinforcement purposes because Schuler discloses that its article already has a reinforced “I-beam” structure (App. Br. 6 (citing Schuler, col. 3, ll. 15-22)). Appellant further argues that the Examiner’s rationale of modifying Schuler’s article for aesthetic purposes “is too speculative to apply” (*id.*).

We are not persuaded by these arguments. We agree with Appellant that the Examiner has not shown that a person of ordinary skill would understand Barts’ indents to provide reinforcement to Schuler’s structure. However, by citing Barts the Examiner has shown that concave indents were a useful configuration for bracket-type bottle holders such as Schuler’s bottle holder 11. Thus, as discussed above, because claim 3 recites an article having a configuration known to be useful in bottle holders, and because nothing unexpected results from that configuration, we agree with the Examiner that claim 3 would have been obvious to a person of ordinary skill in the art in view of the cited references.

We therefore affirm the Examiner’s obviousness rejection of claim 3 over Schuler and Barts. Because they were not argued separately from claim 3, we also affirm the Examiner’s obviousness rejection of claims 8 and 11.

SUMMARY

We affirm the Examiner’s rejection of claims 1 and 5 under 35 U.S.C. § 102(b) as anticipated by Schuler.

We affirm the Examiner’s rejection of claims 6, 7, 9, 10, and 12 under 35 U.S.C. § 103(a) as obvious in view of Schuler.

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We affirm the Examiner's rejection of claims 3, 8, and 11 under 35 U.S.C. § 103(a) as obvious in view of Schuler and Barts.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

GRIMES, *Administrative Patent Judge*, concurring.

I agree with my colleagues that Schuler anticipates claim 1, and that the additional limitations of claims 3 and 6 would have been obvious to those of ordinary skill in the art. However, I cannot agree with the majority's reasoning with respect to anticipation.

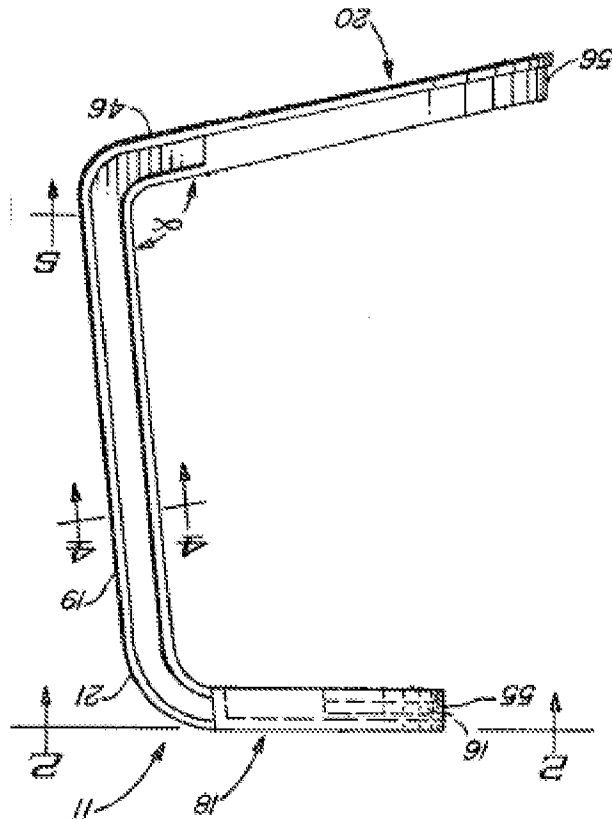
In my view, the majority's reasoning does not adequately address the limitation of claim 1 requiring "a lower end including a continuous ring of material forming an aperture configured for coupling to a neck of a spray bottle." The majority's reasoning, as I understand it, is that one could use the lip of the cap that holds the spray head on a spray bottle to attach the bottle to the body support member 20 of Schuler's device; attached that way, the neck of the bottle would come in contact with the body support member, and therefore the body support member is "configured for coupling to a neck of a spray bottle."

I think this reading of the claim goes beyond the broadest reasonable interpretation. One might as well say that the body support member meets the claim limitation because a bottle could be laid across it horizontally, with the neck of the bottle in contact with the body support member. Any "continuous ring of material forming an aperture" could be said to be "configured for coupling to a neck of a spray bottle" under the majority's interpretation. Since it reads out a limitation of the claims, I consider that interpretation to be unreasonably broad.

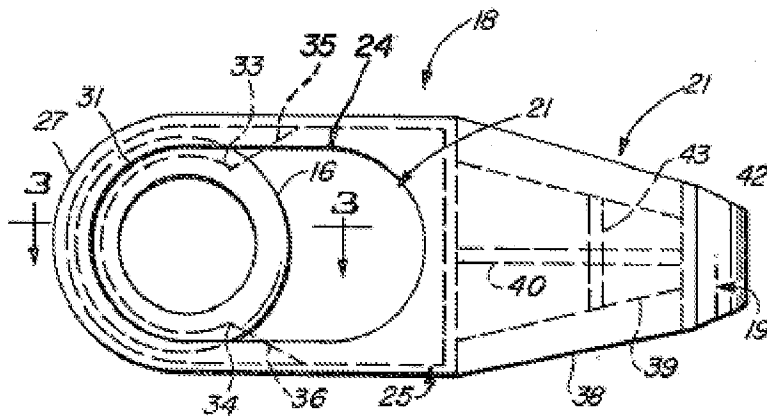
I agree that claim 1 is anticipated, however, when the upper and lower parts of Schuler's device are considered to be, respectively, the lower and upper parts defined by claim 1. That is, claim 1 defines an article having a lower part that "include[es] a continuous ring of material forming an aperture configured for coupling to a neck of a spray bottle," an upper part

that is “a bent upper lip located directly above the aperture,” and a side member connecting the two.

Schuler's Figure 1 is reproduced in the majority opinion (*ante* at 8). That figure, when modified somewhat, looks like this:



This figure shows Schuler's device inverted, and without the associated soda bottle. Schuler's Figure 2 is reproduced below:



This figure shows element 18 of Schuler's device, which is the lower portion of the inverted device. Element 18 includes a continuous ring of material forming an aperture that is configured for coupling to a bottle: "[t]he locking portion 18 locks on the neck 14 of bottle 13 and holds it by friction" (Schuler, col. 3, ll. 1-2).

Element 20 of Schuler's device, which is the upper part of the inverted device, "has the shape of a cylindrical or tubular section with a cylindrical diameter . . . that is approximately the same as the diameter of the body 15 of the bottle 13" (*id.* at col. 3, ll. 31-35) and is angled with respect to handle portion 19, "with the angle typically being greater than ninety degrees" (*id.* at col. 3, ll. 47-49).

Thus, Schuler's device, when considered in inverted orientation, comprises "a shaped body having a lower end including a continuous ring of material forming an aperture configured for coupling to a neck of a spray bottle" (element 18), and "a side member extending upwardly from the lower end" (element 19), that "terminat[es] in a bent upper lip located directly above the aperture" (element 20). To the extent the preamble of claim 1 is structurally limiting, element 20 also reasonably appears to "enabl[e] a spray bottle to be suspended from an ironing board or other surface" notwithstanding the greater-than-90° angle from element 19.

I realize this reasoning differs from that of the Examiner, and therefore an affirmance on this basis might constitute a new ground of rejection, but I think it better explains how the reference meets all the limitations of claim 1.

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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C
PO BOX 7021
TROY MI 48007-7021

lp